OPD OFFICE OF THE PARENT DEFENDER

TUESDAY'S TIP #26. PAYMENT OF WITNESSES

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Situation: You are reading the court summary from DSS. There is a letter from a service provider that has negative or incomplete information about your client.

The Problem: You don't want the report admitted, either because of the type of hearing or because of the need for additional information.

Law:

Adjudication Hearings. The petitioner has the burden of proof and the Rules of Evidence apply. NCGS §§ 7B-804 and 7B-805. There should never be a written report in lieu of testimony in these hearings unless agreed to by all parties.

Initial Disposition, Review and Permanency Planning Hearings. There is no burden of proof on any party and the formal Rules of Evidence do not apply. NCGS § 7B-906.1(c). For an initial disposition hearing, a party may submit a written report in lieu of testimony. In re K.W. and J.W., 272 N.C. App. 487 (2020). For review and permanency planning hearings, there must be some oral testimony provided. In re S.P. and J.P., 267 N.C. App. 533 (2019).

Action Steps:

1. If DSS or the GAL intends to present a written report from a service provider (therapist, substance use disorder counselor, etc.) in lieu of testimony, you should obtain the necessary releases and talk with the provider. Once you have discussed the report with the service provider, you may decide:

   i. To request that the provider submit an addendum in lieu of appearing in court,
   ii. To subpoena the provider as a fact witness, or
   iii. To subpoena the provider as an expert witness.

2. Payment of Fact Witnesses. You must balance the need for the provider to be in court, the need to fairly compensate a professional for their time, and the need to protect the future working relationship between the service provider and your client. You may decide that you won't take any steps to get the provider paid more than what AOC pays for a fact witness. In that case, you should inform them in writing that they are being subpoenaed as a fact witness and refer to the language on the on the subpoena itself:
"A witness under subpoena and that appears in court to testify, is entitled to a small daily fee, and to travel expense reimbursement, if it is necessary to travel outside the county in order to testify… After you have been discharged as a witness, if you desire to collect the statutory fee, you should immediately contact the Clerk's office and certify your attendance as a witness so that you will be paid any amount due you."
3. Payment of Expert Witnesses. If you want the provider to appear as an expert witness, review the information on the OPD website under Experts. File your motion and complete AOC-G-309.

Conclusion: Of most importance, **attorneys are not to pay witnesses directly**. Any witness subpoenaed by a parent attorney must be paid directly by IDS (if an expert) or by AOC (if a fact witness). IDS will not pay an expert witness unless there is a motion and court order authorizing the payment consistent with IDS policy.